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EXAMINER

SIPOS, JOHN

ART UNIT

PAPER NUMBER

3721

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18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/460,836	COSMO, GUY A.	
	Examiner	Art Unit	
	John Sipos	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 31 July 2003.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-22 is/are pending in the application.

4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 9-22 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) Interview Summary (PTO-413) Paper No(s) _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 as failing to adequately teach how to make and use the invention, i.e. failing to provide an enabling disclosure. (A rejection of claims based on this objection follows this paragraph.) The disclosure does not specifically discuss the operation and response of the sealing surface 142 in response to the pressing operation of the heated bar 140. The deformation of the surface 142 is not mentioned. In fact, the word "resilient" is also not mentioned in the specification. Page 4, line 6 does describe the surface as "compliant" but this does not provide sufficient support for the specific operation presently claimed nor can it be considered a synonym for "resilient". Similarly the angle of the sealing surface of ninety

degrees is not disclosed. The angle shown in the drawings may or may not be ninety degrees.

Claims 9-22 are rejected under 35 U.S.C. ' 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. See the reasons set forth in the objection to the specification set forth above. The word "resilient" should be replaced with "compliant" to overcome at least some of the above objections and rejections.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 9,16,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Merritt (3,094,823) in view of Fiesser (5,475,964). The patent to Merritt shows a packaging machine with a feeder spool holding a folded packaging material, a mechanism comprising of feed rollers 20,30 and V-shaped wires 50,51 that reposition and open the folded material so that the fold is in a vertical orientation and a sealing and severing means 55,56 downstream from the inverting mechanism comprising of a bar with a flat head and an opposing sealing surface with a sharp surface. The Merritt device lacks the specific type of sealer recited in the claims. The patent to Fiesser shows a packaging machine in which a tubular film containing articles is transversely sealed by opposing members wherein one is a heated flat bar 26 and a non-heated, sharp, V-shaped cutting surface 25 that provide a clean cut in the

film. It would have been obvious to one skilled in the art to substitute the sealing mechanism of Fiesser for the sealing mechanism of Merritt to provide for a cleaner cut. The use of adjusting means (claim 14) to adjust the position of a well-known mechanism would have been an obvious modification to one skilled in the art to permit the handling of different size articles. Regarding claims 20 and 21, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art because Applicant has not disclosed that the specific angle of the V-shaped sealing surface provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any angled sealing surface. Therefore, it would have been an obvious matter of design choice to modify Merritt to obtain the invention as specified in these claims.

Claims 10,11,17 and 22 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Merritt in view of Fiesser, as applied above, and further in view of Fukuda (5,347,795). The Merritt and Fiesser combination lacks the showing of gear connected pivot arms. The patent to Fukuda shows opposing sealing elements 20 that are pivoted into the sealing position and connected by gears for synchronous movement. It would have been obvious to one skilled in the art to provide the sealing mechanism of Merritt with a supporting pivoting structure as shown by Fukuda so that a more synchronized operation of the sealing arms is achieved. The use of a piston instead of a motor to actuate the sealing arms would have been an obvious modification. Regarding claim 17, note that the pivoting elements carrying the sealing

bars 20 and the gear driving mechanism of Fukuda maintain the sealing bars in a parallel relationship as shown in Figures 13 and 16.

Claims 9,12-16,19,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Runo (3,583,676) in view of Fiesser (5,475,964). The patent to Runo shows a packaging machine with a feeder spool holding a folded packaging material with the fold being on top and in an horizontal orientation, an inverting mechanism 50 that inverts and repositions the folded material so that the fold is in a vertical orientation with a top opening and a sealing and severing means 210,212 downstream from the inverting mechanism. The Runo device lacks the specific type of sealer recited in the claims. The patent to Fiesser shows a packaging machine in which a tubular film containing articles is transversely sealed by opposing members wherein one is a heated flat bar 26 and a non-heated, sharp, V-shaped cutting surface 25 that provide a clean cut in the film. It would have been obvious to one skilled in the art to substitute the sealing mechanism of Fiesser for the sealing mechanism of Runo to provide for a cleaner cut. The use of adjusting means (claim 14) to adjust the position of a well-known mechanism would have been an obvious modification to one skilled in the art to permit the handling of different size articles. Regarding claims 20 and 21, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art because Applicant has not disclosed that the specific angle of the V-shaped sealing surface provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any angled sealing surface. Therefore, it would have been

an obvious matter of design choice to modify Merritt to obtain the invention as specified in these claims.

Claims 10,11,17,18 and 22 are rejected under 35 U.S.C. ' 103(a) as being unpatentable over the patent to Runo in view of Fiesser, as applied above, and further in view of Fukuda (5,347,795). The Runo and Fiesser combination lacks the showing of gear connected pivot arms. The patent to Fukuda shows opposing sealing elements 20 that are pivoted into the sealing position and connected by gears for synchronous movement. It would have been obvious to one skilled in the art to provide the sealing mechanism of Runo with a supporting pivoting structure as shown by Fukuda so that a more synchronized operation of the sealing arms is achieved. The use of a piston instead of a motor to actuate the sealing arms would have been an obvious modification. Regarding claim 17, note that the pivoting elements carrying the sealing bars 20 and the gear driving mechanism of Fukuda maintain the sealing bars in a parallel relationship as shown in Figures 13 and 16.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered but are not persuasive.

Applicant argues with respect to claim 9 that the applied references do not show a "resilient" sealing surface but rather a non-resilient severing surface. It should first be noted that the claims recite a "resilient, non-heated sealing surface" which can be interpreted in many ways. As was stated in the last action the claimed resiliency or

compliancy of the sealing surface can be read on longitudinal or lateral compliancy of the whole sealing element or the compliancy of the material of which the element is made. (Note that the term "sealing surface" in the specification is directed to L-shaped element 142 and not only the surface of the element.) Some lateral compliance or give is always present in tools and without further structural limitation the element 39 of Fiesser is considered to be broadly resilient. Furthermore, longitudinal compliance is well known in the art since the use of springs to support sealing elements, or any pressing tool, is used to accommodate the work piece and providing such means would have been obvious to one of ordinary skill in the art to accommodate minor variations in thickness of the work piece. . Such spring mounted sealing structures are shown by Wirsig, Lane, Ramsey, Korzinek and Fukuda (Fig. 7A).

Applicant argues regarding the rejection of that the references do not provide any incentive for combining them and that such incentive must be shown in the prior art rather than by the personal opinion of the Examiner. As set forth in Sections 2143 of the MPEP, the suggestion or motivation to modify or combine the references must either be in the references themselves or in the knowledge generally available to one of ordinary skill in the art (also see Section 2143. 01). The combination of the references as made in the above rejections is made based on the knowledge of one of ordinary skill in the art.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 305-3579**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Peter Vo, can be reached at (703) 308-1789.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos
Primary Examiner
Art Unit 3721